

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

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FILE: B-213209.2

DATE: October 23, 1984

MATTER OF: Bank Street College of Education--
Request for Reconsideration

DIGEST:

1. Agency's failure to follow its own regulation that does not define substantive rights of offerors but is designed for the benefit of the government does not provide a basis for upholding complaint. Agency regulation that prohibits disclosure of government cost estimate in a negotiated procurement is such a regulation.
2. A request for reconsideration in which protester disagrees with prior decision but does not present any arguments or facts to show that that decision was erroneous provides no basis for modifying that decision.

Bank Street College of Education requests that we reconsider our decision in Bank Street College of Education, B-213209, June 8, 1984, 84-1 CPD ¶ 607, in which we denied Bank Street's protest concerning the award of a cost-reimbursement contract to create and operate a School Technology Center.

We affirm our prior decision.

In Bank Street, we rejected the protester's complaint that the agency Director improperly awarded the contract to Harvard University in the face of an evaluation panel's recommendation that the award be made to Bank Street. We held that the Director had the authority to make the award and that he reasonably determined that Harvard's proposal was technically superior. We also disagreed with Bank Street's contention that it was treated unfairly when the contracting officer informed two of the

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offerors in the competitive range, but not Bank Street, of the agency's cost estimate, and that the contracting officer's action was legally objectionable because it was contrary to departmental regulations prohibiting disclosure of the estimate. We reached this latter conclusion because we viewed the regulations as internal policy matters for the guidance of agency personnel which created no rights or responsibilities such that actions taken in violation of their provisions would be subject to legal objection by our Office.

Bank Street now challenges our finding that the agency regulations regarding disclosure of cost estimates are matters of internal policy, and it disagrees with our finding that it was not prejudiced by the disclosure.

Specifically, Bank Street points out that the Education Department Procurement Regulations (EDPR) involved here were promulgated under the authority of 5 U.S.C. § 301 (1982) (which generally grants authority to an executive agency head to prescribe regulations for the governing of his department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and presentation of its records, papers, and property) and § 205(c) of the Federal Property and Administrative Services Act, 40 U.S.C. § 486(c) (1982) (which grants authority to executive agency heads to issue orders and directives necessary to implement the federal procurement regulations). Consequently, Bank Street argues, since the EDPR are statutorily based, they have the force and effect of law and are binding on the agency.

First of all, 5 U.S.C. § 301 is a "housekeeping statute" designed to give agency heads the authority to govern internal departmental affairs. It authorizes rules of agency organization procedure or practice as opposed to substantive rules which affect individual rights and obligations. Chrysler Corporation v. Brown, 441 U.S. 281 (1979); see also Einhorn v. DeWitt, 618 F.2d 347 (5th Cir. 1980) (Internal Revenue Service procedural rules promulgated under 5 U.S.C. §§ 301, 552 did not have the force and effect of law inasmuch as their purpose was to govern the

agency's internal affairs.) Regardless of the nature of the statute, however, the controlling question is whether the regulatory provision creates any rights in offerors or is merely for the protection or guidance of the government; if the latter, an offeror cannot be heard to complain that the regulation was not followed. Alderson Reporting Co. Inc., et al., B-205552.2, Feb. 12, 1982, 82-1 CPD ¶ 128; Kirschner Research Institute, Humanics Associates, and Onyx, B-186489; B-186492, Sept. 27, 1976, 76-2 CPD ¶ 289; Huntsville Associates, B-183637, July 23, 1975, 75-2 CPD ¶ 59; Centex Const. Co., Inc. v. U.S., 162 Ct. Cl. 211 (1963). We fail to see how the provision in question can be viewed as anything other than for the protection of the government, and the protester, other than stating that it was "entitled to rely on the regulations that prohibit . . . disclosure . . . [of the estimate]," has offered no reason why we should view it otherwise. The obvious purpose of the provision is to discourage disclosure of the basis for the government's negotiating position so as to permit the contracting officer to obtain the best price for the government. It is simply not intended to confer a benefit on offerors.

The only basis for an offeror to complain of the cost estimate disclosure is that the disclosure was prejudicial to its competitive position. Bank Street, of course, alleges precisely that. It contends that the agency treated it unfairly by not disclosing the government's cost estimate to it, and that the agency denied Bank Street the opportunity for meaningful discussions when the Director did not reopen negotiations after he determined that Bank Street's proposed level of effort was not as desirable as that of Harvard.

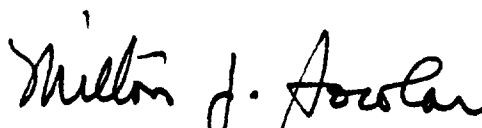
We addressed these contentions at length in our earlier decision. In addition to our finding that the agency had not treated Bank Street unequally, we also found that although Bank Street was not informed of the agency's views regarding its proposed level of effort, Bank Street was not denied the opportunity for meaningful discussions since the evaluation panel did not consider Bank Street's proposal deficient in this regard, and the Director considered this aspect of Bank Street's

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proposal to be acceptable albeit less desirable than that of Harvard. Moreover, we also pointed out that the solicitation adequately informed offerors of the level of effort anticipated by the agency and that providing Bank Street with the government's cost estimate would not have given it any more information as to the expected level of effort than it already had. While Bank Street nonetheless insists that had it been advised of the estimate it would have realized the inadequacy of its proposed level of effort and offered a greater effort, the agency was not required to provide that information in discussions with Bank Street because it was not related to any perceived deficiency in the Bank Street proposal.

In short, while Bank Street obviously disagrees with our disposition of the questions involved here, it has not presented any new argument or facts to show that our earlier decision was erroneous. Mere disagreement with our prior decision does not provide a basis to reverse that decision. Atlas Contractors, Inc.--Request for Reconsideration, B-209446.3, June 30, 1983, 83-2 CPD ¶ 46.

The decision is affirmed.


 Acting Comptroller General
 of the United States